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Item 90 of the provisional agenda*
Protection of persons in the event of disasters

Protection of persons in the event of disasters

Report of the Secretary-General

Summary

The present report has been prepared pursuant to General Assembly resolution 71/141, by which the Assembly invited Governments to submit comments concerning the recommendation made by International Law Commission to the Assembly to elaborate a convention on the basis of the draft articles on the protection of persons in the event of disasters adopted by the Commission at its sixty-eighth session (2016).

* A/73/150.

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I. Introduction

1. The International Law Commission adopted the draft articles on protection of persons in the event of disasters at its sixty-eighth session, held in 2016 (see A/71/10, para. 48). In its resolution 71/141, the General Assembly took note of the draft articles on the protection of persons in the event of disasters, presented by the Commission, and invited Governments to submit comments concerning the recommendation by the Commission to elaborate a convention on the basis of the articles. The Assembly also decided to include in the provisional agenda of its seventy-third session the item entitled "Protection of persons in the event of disasters".

2. By a note verbale dated 21 December 2017, the Secretary-General invited Governments to submit, no later than 1 June 2018, their written comments concerning the recommendation by the Commission to elaborate a convention on the basis of the draft articles.

3. As at 9 July 2018, written comments had been received from Austria, Czechia, El Salvador, Mali, Qatar, and the United Kingdom of Great Britain and Northern Ireland. Those comments or summaries thereof are provided below, organized according to comments on any future action regarding the articles on protection of persons in the event of disasters (sect. II) and on the articles (sect. III).

II. Comments on any future action regarding the articles on the protection of persons in the event of disasters

Austria

[Original: English]
[1 June 2018]

Austria proposes to defer the discussion on the elaboration of a convention on the basis of the draft articles in view of the short time that has passed since their adoption by the International Law Commission. Such an approach would allow time to assess whether the draft articles will be able to stand the test of time and whether States accept them in their practice. Only a review of that practice will show whether a conversion of the draft articles into a convention is warranted.

Czechia

[Original: English]
[30 May 2018]

The Czech Republic regards the draft articles adopted by the International Law Commission on the protection of persons in the event of disasters as an important contribution to the field of international law governing response to disasters. The Czech Republic does not consider it necessary, at the present stage, to elaborate a legally binding international convention on the basis of the draft articles.

El Salvador

[Original: Spanish]
[20 April 2018]

Since the International Law Commission took up consideration of the topic, the Republic of El Salvador has supported its decision to opt for codification and progressive development of the law in this area. It has also supported the Special Rapporteur's aim to prevent the severe consequences of disasters. Effective risk management, civil protection, early warning systems and repairing the social fabric

damaged by natural phenomena are of crucial importance to El Salvador, given its history of natural disasters and its level of vulnerability.

The Government of El Salvador recognizes that over the course of a number of sessions on the topic, during which El Salvador actively participated, the observations of States led to the refinement of a set of draft articles concerning the effective protection of persons whose lives, well-being and property have been affected by disasters.

In that regard, it seems appropriate to adopt an international legal instrument that takes a human rights approach and is of particular relevance to the role of the affected State in ensuring the protection of persons and the provision of disaster relief assistance in its territory, or in a territory under its jurisdiction or control.

Conventions and treaties are one of the autonomous sources of general international law. They are written agreements setting out rights and obligations that are binding on the States and/or organizations parties to them. The Government of El Salvador considers that it is particularly important to elaborate a convention on the basis of the draft articles, since it would be declaratory of existing practices among States and would therefore help to clarify and systematize those practices. It is also important to ensure the practical application of the fundamental value of solidarity in international relations in order strengthen international cooperation at every stage of a disaster.

[...]

The adoption of an international legal instrument would undoubtedly make a significant contribution to the harmonization of the measures and protocols necessary for the effective prevention, reduction and management of disaster risk, without prejudice to any bilateral and multilateral instruments on the matter that States may have endorsed previously. In that connection, El Salvador is a party to a number of relevant agreements, including: a bilateral agreement on technical cooperation with Cuba, which aims to reduce disaster risk and disasters in El Salvador; an agreement with Guatemala on disaster prevention, response and mitigation; and the Hyogo Framework for Action 2005–2015, adopted at the World Conference on Disaster Reduction.

In sum, this new product of the International Law Commission would not only constitute an important legal development in terms of harmonization but would also make a decisive contribution to improving the legal framework for protecting persons more effectively in the event of disasters and would serve as an essential tool in the global response to disasters.

Qatar

[Original: Arabic]
[14 June 2018]

The elaboration of such a convention would be the culmination of the efforts of numerous international organizations and bodies to develop guidelines, mechanisms and programmes for use in relief operations. It would provide an international legal framework for making the protection of persons in the event of disasters a universal humanitarian principle and absolute obligation incumbent upon every State to carry out without any discrimination or bias towards any one party at the expense of another. The State of Qatar has always been conscientious about supporting humanitarian action in all forms, providing relief assistance, and combating the effects of disasters wherever possible.

United Kingdom of Great Britain and Northern Ireland

[Original: English]
[18 June 2018]

Concerning future action regarding the draft articles, the United Kingdom continues to be of the view that the development of guidelines to inform good practice would be most helpful for States and others engaged in disaster relief, rather than a legally binding instrument, on the basis that such guidelines appear more likely to enjoy widespread support and acceptance.

III. Comments on the articles on protection of persons in the event of disasters

El Salvador

[Original: Spanish]
[20 April 2018]

El Salvador reiterates the need to include in draft article 1 (Scope) details of the elements *ratione materiae* and *ratione personae* mentioned in the commentary to that draft article, since that would clarify significantly the rights and obligations of States affected by a disaster with respect to persons present in their territory, or in a territory under their jurisdiction or control, and the rights and obligations of third States, international organizations, non-governmental organizations and other entities in a position to cooperate in the provision of disaster relief assistance.

Mali

[Original: French]
[8 May 2018]

The Permanent Mission of Mali to the United Nations wishes to make the following drafting suggestions in relation to draft articles 7, 8, 12 (2) and 18 (2):

(a) In article 7, delete the phrase "with the components of the Red Cross and Red Crescent Movement";

(b) In the title of article 8, replace the words "[f]orms of cooperation" with "[a]reas of cooperation";

(c) In article 12, paragraph 2, replace the phrase "shall expeditiously give due consideration to the request and inform the affected State of its reply" with "has an obligation to give due consideration to the request and inform the affected State of its reply expeditiously";

(d) Replace the text of article 18, paragraph 2, with "[t]he present draft articles do not call into question the rules of international humanitarian law to the extent that the response to a disaster is governed by the latter".

Qatar

[Original: Arabic]
[31 May 2018]

Qatar believes that it is important for any draft convention to affirm the right of each State to decide whether or not it needs assistance from another State without being compelled to accept it. It should be left up to the discretion of each State, and each State should make its decision in a manner consistent with its higher interests and territorial sovereignty. Under the rules of international law, a State enjoys full independence and full sovereignty over its territory, and it alone has the right to decide

whether to resort to international assistance or not. Qatar also believes that it is important for any draft convention to affirm that when assistance is requested after a natural disaster has occurred, there must be guarantees that such assistance, regardless of which State provides it, will not be used as a pretext for intervening in the internal affairs of requesting States. The draft convention should also provide that all States that are requested to provide assistance must undertake to guarantee that when providing that assistance, they will honour the domestic law of requesting States and their full sovereignty over their territories.

Qatar also wishes to recall the provisions of the 1991 Economic and Social Council resolution concerning guiding principles for the development of legislation on states of emergency and the derogation of political and social rights, and in particular subparagraphs (b) and (c) of Part II concerning measures taken in emergency situations.

United Kingdom of Great Britain and Northern Ireland

[Original: English]
[18 June 2018]

The United Kingdom remains in broad agreement with the substance of the draft articles as adopted by the commission on its second reading at its sixty-eighth session in 2016 and is grateful to the International Law Commission for its work.